Tenaga Nasional Bhd v My Seven Vacation Sdn Bhd & Anor and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS A-02(IM)(NVCV)-488–03 OF 2019 AND A-02(IM)(NCVC)-521–03 OF 2019
MARY LIM, HAS ZANAH MEHAT AND VAZEER ALAM JJCA
25 FEBRUARY 2021

Civil Procedure — Appeal — Appeal against judgment of High Court — High Court granted respondent two separate injunction orders to prevent appellant from disconnecting supply of electricity to their premises — Whether respondents had satisfied requirements to obtain an interim injunction pending disposal of suits — Whether there was correct application of s 38 of the Electricity Supply Act 1990 and in reliance on Mayaria's case — Whether res judicata and estoppel applicable — Whether there was locus standi on second respondent since it was not registered user with appellant for electricity supply — Whether undertaking as to damages was not given at the High Court proceedings — Electricity Supply Act 1990 s 38

These were two consolidated appeals ('Appeal 488 and Appeal 521') against the decision by learned High Court judicial commisioner ('JC') involving two separate interim injunction orders granted in different suits to the respondents/plaintiffs to prevent the appellant from disconnecting the supply of electricity to the respondents' premises. The learned JC held that that the second respondent in Appeal 521 had sufficiently established that it has a legitimate interest and business at the premise to apply for an injunction. The learned JC had also rejected the preliminary issue on res judicata and estoppel raised in Appeal 488. The learned JC also held that the respondents would suffer greater injustice by not granting the injunction to maintain the status quo pending the trial proper of the suit. On the appellant's statutory powers to disconnect the electricity supply, the learned JC had considered the legal issue raised by both parties on s 38(4) of the Electricity Supply Act 1990 ('the Act'). His Lordship then referred to and followed the decision in *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276 ('Mayaria'). However, learned counsel for the appellant submitted that the amendment by Act A1501 to s 38, particularly sub-s (4) of the Act that came into force on 1 January 2016 by (PU(B) 501/2015) was after the court's decision in *Mayaria* and, therefore, altered the position in *Mayaria*. Hence, the common issues in these appeals were: (a) whether the respondents had satisfied the requirement to obtain an interim injunction pending the disposal of the suits; and (b) whether there was a correct application of s 38 of the Act in relying on *Mayaria*. Separately, the preliminary issues were: (i) for Appeal 488 on res judicata and estoppel due to the setting aside by the Court of Appeal, of the injunction issued on notice of

A disconnection of electricity supply ('NDES'); (ii) for Appeal 521 on locus standi of the second respondent since it was not the registered user with the appellant for the electricity supply; and (iii) the required undertaking as to damages was not given at the High Court proceedings and it was not at all averred in the affidavit in support of the application.

B

Held, dismissing both appeals with costs in the cause:

(1) On the issues impacting the second respondent in Appeal 521 (legal standing, being the premise owner was the actual user of the power supply though not being the registered user), the second respondent was given a concession by the appellant to take legal action against them. Based on these circumstances, the court did not need to deal with this issue at this stage. However, this concession was only limited to the case in this appeal and did not apply elsewhere. The appellant argued that the respondents did not entitled to an injunction as they failed to provide the required undertaking as to damages. However, through their counsel in open court, the respondents gave the said undertaking as to damages. Therefore, this was no longer an issue (see para 25).

(2) The respondents were wrong in relying on the High Court decision of *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276 as the case was decided before the amendment to s 38 of the Act. The proper authority was *Karun Klasik Sdn Bhd v Tenaga Nasional Bhd* [2018] 3 MLJ 749, which was decided after the said amendment. With the amendment of sub-s (4) of s 38, the appellant must disconnect the supply after the discovery of tampering where the appellant could issue a written statement, and this statement shall be prima facie evidence of the amount due from the registered customer or user (see para 26).

(3) The court was of the view that considering the Federal Court's decision in *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* (unreported), suffice to say that the learned JC was correct in exercising his discretion in granting the injunction against the appellant from disconnecting the electricity supply pending the hearing of the main suits. The court agreed with the learned JC's conclusion that *Mayaria* was the case on point as the facts were similar (see para 28).

(4) Upon perusal of the amended s 38 of the Act, particularly sub-s (4), the court was unable to find the provision that enabled the appellant as a provider of the electricity supply to disconnect the supply after the offending meter had been rectified or remedied and further loss of revenue had ceased. Therefore, in the court's view, the amendment had not altered the position as determined by the Federal Court in affirming this court's decision in *Mayaria*. The appellant's statutory right to disconnect was still relevant and constitutes a serious question that must be addressed substantively and fully determined at the trial (see para 33).

[Bahasa Malaysia summary

Ini adalah dua rayuan yang digabungkan ('Rayuan 488 dan Rayuan 521') terhadap keputusan oleh pesuruhjaya kehakiman Mahkamah Tinggi ('PK') yang melibatkan dua perintah interim injunksi yang berasingan yang diberikan kepada responden-responden/plaintif-plaintif untuk menghalang perayu untuk memotong bekalan elektrik ke premis responden-responden. PK terpelajar memutuskan bahawa responden kedua di Rayuan 521 telah memutuskan bahawa beliau mempunyai kepentingan yang sah terhadap perniagaan di premis tersebut untuk memohon injuksi. PK terpelajar juga menolak bantahan awal mengenai res judicata dan perkara estoppel yang dibangkitkan di Rayuan 488. PK terpelajar juga memutuskan bahawa responden-responden akan mengalami prejudis yang besar sekiranya injunksi itu tidak dibenarkan untuk mengekalkan status quo ketika perbicaraan prosiding utama sedang berlangsung. Berkenaan dengan kuasa statutori perayu untuk memotong bekalan elektrik, PK bijaksana telah meneliti persoalan undang-undang yang dibangkitkan oleh pihak-pihak berkenaan dengan s 38(4) Akta Pembekalan Elektrik 1990 ('Akta tersebut'). PK bijaksana telah merujuk dan mengikuti keputusan kes di *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276 ('Mayaria'). Walau bagaimanapun, peguam terpelajar berhujah bahawa pindaan Akta A1501 berkenaan s 38, khususnya sub-s (4) Akta tersebut yang berkuatkuasa 1 Januari 2016 melalui (PU(B) 501/2015) adalah selepas keputusan kes *Mayaria* dan telah mengubah kedudukan kes *Mayaria*. Oleh yang demikian, isu bersama di dalam rayuan-rayuan ini adalah: (a) sama ada responden-responden telah memenuhi keperluan untuk memperoleh injunksi interim sementara menunggu pelupusan kes; dan (b) sama ada s 38 Akta tersebut diguna pakai dengan betul dengan prinsip kes *Mayaria*. Secara berasingan, isu-isu awal adalah: (i) untuk Rayuan 488 berkenaan res judicata dan estoppel pengenepian oleh Mahkamah Rayuan, berkenaan dengan notis pemotongan bekalan elektrik ('NDES'); (ii) untuk Rayuan 521 berkenaan locus standi responden kedua yang bukan pemilik berdaftar dengan perayu untuk bekalan elektrik tersebut; dan (iii) akujanji untuk kerugian tidak diberikan di dalam prosiding Mahkamah Tinggi dan tidak dinyatakan di dalam afidavit permohonan tersebut.

Diputuskan, menolak kedua rayuan tersebut dengan kos di dalam kausa:

(1) Berkenaan isu-isu berkenaan responden kedua di Rayuan 521 (locus standi, yang merupakan pemilik premis dan bekalan kuasa tersebut dan walaupun bukan pengguna berdaftar), responden kedua telah diberikan konsesi oleh perayu untuk mengambil tindakan undang-undang keatas mereka pada mulanya. Berdasarkan keadaan kes, mahkamah tidak perlu untuk menimbangkan isu ini di peringkat seterusnya. Walau bagaimanapun, konsesi ini hanya diberikan untuk kes rayuan ini sahaja. Perayu berhujah bahawa responden-responden tindak mempunyai hak ke atas injunksi disebabkan tidak memberikan akujanji kerugian.

A Namun, melalui peguamcara responden di dalam mahkamah terbuka, responden-responden telah memberikan akujanji tersebut. Oleh yang demikian, perkara ini bukan lagi merupakan satu isu (lihat perenggan 25).

B (2) Responden-responden telah salah dalam bergantung kepada penghakiman Mahkamah Tinggi di kes *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276. Otoriti yang betul adalah kes *Karun Klasik Sdn Bhd v Tenaga Nasional Bhd* [2018] 3 MLJ 749, yang diputuskan selepas pindaan Akta tersebut. Dengan pindaan di
C sub-s (4) s 38, perayu haruslah memutuskan bekalan elektrik selepas penemuan pengusikan meter yang mana perayu boleh mengisukan pernyataan bertulis, dan pernyataan bertulis ini haruslan menjadi bukti prima facie yang dituntut dari pengguna berdaftar (lihat perenggan 26).

D (3) Mahkamah ini berpendapat bahawa menggunapakai kes Mahkamah Persekutuan di *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* (tidak dilaporkan) ('Mayaria'), adalah memadai untuk menyatakan bahawa PK terpelajar adalah betul dalam menggunakan budi bicaranya untuk membenarkan injunksi terhadap perayu untuk memutuskan bekalan
E elektrik sebelum pelupusan kes utama. Mahkamah ini bersetuju dengan dapatan PK bahawa kes *Mayaria* adalah kes yang serupa dengan kes ini (lihat perenggan 28).

(4) Setelah meneliti pindaan s 38 Akta tersebut terutamanya sub-s 4,
F mahkamah ini tidak menjumpai sebarang peruntukan lain yang membenarkan perayu sebagai pembekal bekalan elektrik untuk memutuskan bekalan elektrik setelah meter itu diperbaiki. Oleh itu, menurut mahkamah ini, pindaan tersebut tidak mengubah kedudukan undang-undang sepertimana yang diputuskan oleh Mahkamah
G Persekutuan yang mengekalkan prinsip kes *Mayaria*. Hak undang-undang perayu untuk memutuskan bekalan elektrik masih relevan dan seharusnya diputuskan di perbicaraan penuh (lihat perenggan 33).]

H **Cases referred to**

Karun Klasik Sdn Bhd v Tenaga Nasional Bhd [2018] 3 MLJ 749; [2018] 9 CLJ 184, CA (refd)

Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193; [1995] 1 CLJ 293, CA (refd)

I *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276; [2015] 6 CLJ 788, HC (refd)

Legislation referred to

Electricity Supply Act 1990 s 38, 38(1), (3), (4)

Appeal from: Civil Suit Nos AA-22NCVC-135–09 of 2016 and AA-22NCVC-81–06 of 2018 (High Court, Ipoh)

Raja Ahmad Mohzanuddin Shah Raja Mohzan (Jason Cheong Kak Lok with him) (Azmi & Assoc); Shamsul Bahrin Manaf (Prithi Verma and Maizura Mohamed Amin with him) (Prithi Junainah & Assoc) for the appellant.

CM Lai (Loh Cien Zen and Maisarah with him) (CM Lai & Partners) for the respondents.

Has Zanah Mehat JCA (delivering judgment of the court):

INTRODUCTION

[1] There are two appeals before us, namely Civil Appeal No A-02(IM)(NVCV)-488–03 of 2019 ('Appeal 488') and Civil Appeal No A-02(IM)(NCVC)-521–03 of 2019 ('Appeal 521') filed by the appellant/defendant ('the appellant') against two separate injunction orders granted in different suits to the respondents/plaintiffs ('the respondents') to prevent the appellant from disconnecting the supply of electricity to the respondents' premises. Both orders were granted by the same learned judicial commissioner at the Ipoh High Court.

[2] We heard the appeals together as the issues are identical. After perusing the appeal records, considering the submissions, both oral and written, we dismissed both appeals with costs in the cause. We now give our reasons for the same.

BACKGROUND FACTS

Appeal 488

[3] The appellant in the suit is the sole provider of electricity in Peninsular Malaysia and is a licensee under the Electricity Supply Act 1990 ('the Act') with statutory powers to take action for offences committed under the Act, in particular for the tampering of the appellant's meters and the theft or pilferage of electricity.

[4] For Appeal 488, both the first and second respondents are the appellant's registered customers for electricity supply to their respective premises. Both the first respondent and the second respondent are operators of a restaurant business with common directors. The first respondent carried out

its business at No 42 Lorong Cheah Cheng Lim, 30350, Ipoh Perak ('premise 1'), and the second respondent at No 42A Lorong Cheah Cheng Lim, 30350, Ipoh Perak ('premise 2'). Premise 1 is adjacent to premise 2 (collectively referred to as 'the premises').

[5] During an inspection on 11 August 2016, the appellant's employees discovered the tempering of meters at the premises. The appellant then issued a notice of disconnection of electricity supply ('NDES') on 11 August 2016 (on the same day of the inspection), notifying the respondents that the electricity supply to the premises would be disconnected under s 38(1) of the Act (both NDES to the premises are collectively referred to as 'NDES 1').

[6] In NDES 1, the respondents were duly informed of the intended disconnection of electricity to the premises on 8 September 2016.

[7] It was not a matter of dispute that the meters had been rectified with no outstanding electricity bills for the premises since that inspection on 11 August 2016.

[8] On 5 September 2016, the respondents filed a writ against the appellant for the following reliefs, among others:

(a) for a declaration that the respondents did not tamper with the meters;

(b) the respondents do not owe any monies to the appellant resulting from the 11 August 2016 inspection; and

(c) that the NDES 1 dated 11 August 2016 to be declared null and void.

[9] On 6 September 2016, the respondents filed an ex parte application for an interim injunction against the appellant from carrying out the disconnection as stipulated in NDES 1 until the final disposal of the action. The High Court granted the ex parte interim injunction on 7 September 2016. The appellant's applications to set aside the ex parte interim injunction and inter partes application to set aside the said injunction were dismissed by the High Court.

[10] Aggrieved, the appellant filed an appeal to this court against the decision. On 31 October 2017, this court allowed the appellant's appeal against the said High Court's decision.

[11] Following the decision of this court, on 3 August 2018, the appellant issued the second NDES ('NDES 2' RR Vol 2B (part C) encl 4 PDF pp 18–19/hardcopy at pp 215–222).

[12] The respondents subsequently filed another application in encl 69 for an interim injunction to restrain the appellant from carrying out the intent of NDES 2. The High Court again allowed the injunction, hence this appeal before us.

Appeal 521

[13] The second respondent is a company carrying out the business of processing, freezing and cold storage of seafood at No 1541, Lorong Kerapu, Taman Sejahtera, 35400 Hutan Melintang, Perak ('the premise').

[14] The appellant inspected the premise on 7 June 2018, where the appellant's employees also discovered tampering of the electricity meter.

[15] The premise had originally belonged to the first respondent, but it was subsequently acquired by the second respondent by way of a sale and purchase agreement dated 31 March 2009. That said, at the inspection date, the first respondent remained as the registered user of the appellant.

[16] As a consequence of the tempering of the electricity meter, the appellant issued the notice of disconnection of electricity supply ('NDES') for execution on 3 July 2018.

[17] On 27 June 2018, the respondents filed a writ against the appellant for:

(a) a declaration that the respondents did not tamper with the meter;

(b) an injunction to prohibit the appellant from disconnecting the electricity supply to the premise; and

(c) a declaration that the NDES dated 7 June 2018 is null and void.

[18] On 28 June 2018 (before the disconnection date), the respondents applied for an interim injunction in encl 4, premised on the following grounds:

(a) the second respondent has the locus standi in applying for an injunction, being the actual user, though not being the registered user of electricity supplied to the premise;

(b) corrective measures had been taken on the alleged tampered meter; therefore, the appellant cannot continue with its action to disconnect the supply of power to the premise;

(c) any disconnection to be carried out at this juncture would cause irreparable damage to the second respondent's business; and

(d) the appellant will not suffer any loss if the disconnection is not carried out at this juncture, pending the final disposal of the respondent's suit.

[19] For the avoidance of doubt NDES 2 in Appeal 488 and NDES in Appeal 521 hereinafter will be referred to as 'NDES' unless expressly stated. the premises in Appeal 488 and the premise in Appeal 521 will be collectively referred to as 'the premises'.

FINDINGS OF THE HIGH COURT

[20] In both cases, after considering various arguments advanced by the respondents and the appellant, His Lordship allowed both applications for an interim injunction pending the disposal of the suits.

[21] On the preliminary issue of locus standi in Appeal 521, His Lordship was satisfed that the second respondent had sufficiently established that it has a legitimate interest and business at the premise to apply for an injunction. His Lordship had also rejected the preliminary issue on res judicata and estoppel raised in Appeal 488, with a view that the application under encl 69 is premised differently from the earlier application where the interim injunction granted had been set aside by the Court of Appeal.

[22] On the application for an injunction pending the disposal of the suit, His Lordship applied the principles in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193; [1995] 1 CLJ 293 and concluded that the respondents would suffer greater injustice by not granting the injunction to maintain the status quo pending the trial proper of the suit. His Lordship opined that on a balance of convenience and justice of the case, the scale tilted for the respondents in the granting of an injunction.

[23] On the appellant's statutory powers to disconnect the electricity supply, His Lordship had considered the legal issue raised by both parties on s 38(4) the Act. His Lordship referred to and followed the decision in *Mayaria Sdn Bhd & Anor v Tenaga Nasional Berhad* [2015] MLJU 276; [2015] 6 CLJ 788. That being the case, the legality of the NDES by the appellant remains an issue to be determined at the trial.

ISSUES IN THESE APPEALS

[24] There are some common issues in both appeals, namely:

(a) whether the respondents have satisfied the requirement to obtain an interim injunction pending the disposal of the suits; and

(b) whether there has been a correct application of s 38 of the Act in relying

on *Mayaria*.

Separately, the preliminary issues were:

(a) for Appeal 488 on res judicata and estoppel due to the setting aside by the Court of Appeal, of the injunction issued on NDES 1;

(b) for Appeal 521 on locus standi of the second respondent since it is not the registered user with the appellant for the electricity supply; and

(c) the required undertaking as to damages was not given at the High Court proceedings and it was not at all averred in the affidavit in support of the application.

DECISION

[25] On the issues impacting the second respondent in Appeal 521 (legal standing, being the premise owner is the actual user of the power supply though not being the registered user), the second respondent was given a concession by the appellant to take legal action against them. In the circumstances, we believe that we do not need to deal with this issue at this stage. We would, however, like to stress that this concession is only limited to the case in this appeal and does not apply elsewhere. The appellant argued that the respondents are not entitled to an injunction as they failed to provide the required undertaking as to damages. However, through their counsel in open court, the respondents gave the said undertaking as to damages. Therefore, this is no longer an issue.

[26] The appellant further argued that the respondents are not entitled to the injunction since the appellant has the statutory right to disconnect under s 38 of the Act. It was wrong on the respondents to rely on *Mayaria* as the case was decided before the amendment to s 38. The proper authority is *Karun Klasik Sdn Bhd v Tenaga Nasional Bhd* [2018] 3 MLJ 749; [2018] 9 CLJ 184, which was decided after the said amendment. With the amendment of sub-s (4) of s 38, the appellant must disconnect the supply after the discovery of tampering where the appellant can issue a written statement, and this statement shall be prima facie evidence of the amount due from the registered customer or user.

[27] It was submitted before us by the respondents' learned counsel that it is in the public domain that the Federal Court affirmed the decision in *Mayaria* by a corum of five on 4 September 2019. However, unfortunately, we were informed that no written judgment is available. The Federal Court decision was supposedly pronounced after the decision of this case at the High Court.

[28] We are of the considered view that considering the Federal Court's said

decision in *Mayaria,* suffice to say that His Lordship was correct in exercising his discretion in granting the injunction against the appellant from disconnecting the electricity supply pending the hearing of the main suits. We agree with His Lordship's conclusion that *Mayaria* is the case on point as the facts are similar.

[29] However, learned counsel for the appellant submitted that the amendment by Act A1501 to s 38, particularly sub-s (4) of the Act that came into force on 1 January 2016 by (PU(B) 501/2015) was after this court's decision in *Mayaria* and, therefore, altered the position in *Mayaria*.

[30] We have perused the amendment. We find that with the amendment, sub-ss (1) and (3) were substituted with the new provisions, new sub-s (1B) was inserted, and consequential amendment to the other subsections. For convenience, we reproduced s 30 of the amending Act A1501 to appreciate the provisions that have been amended as follows:

> (30) Section 38 of the principal Act is amended:
>
> (a) by substituting for subsection (1) the following subsection:
>
> (1) Where any person employed by a licensee finds upon any premises evidence which gives reasonable grounds for him to believe that an offence has been committed under subsection 37(1), (3) or (14), the licensee or any person duly authorized by the licensee shall within three working days from the date of such finding inform the Commission in writing, and the licensee may, upon giving not less than forty-eight hours' notice from the same date in such form as may be prescribed, cause the supply of electricity to be disconnected from the said premises.;
>
> (b) by inserting after subsection (1A) the following subsection:
>
> (1B) Upon receiving such information under subsection (1), the Commission may verify the matter, and in cases where it finds that no offence has been committed, the supply of electricity shall be reconnected immediately;
>
> (c) by substituting for subsection (3) the following subsection:
>
> (3) The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under subsections 37(1), (3) and (14) and any reasonable expenses directly incurred by the licensee under this section including expenses incurred in respect of reconnection of electricity in the manner as have been directed by the Commission: Provided that and subject to subsection (4), if the licensee does not proceed with a claim for such loss of revenue and expenses in Court, the licensee may only claim against the consumer for the said loss of revenue and expenses for a period not exceeding six months retrospectively from the date the offence was discovered under subsection (1);
>
> (d) in subsection (4):

(i) by inserting after the words 'subsection (3)' the words 'and such written statement shall be notified to the consumer within fourteen working days or any period as extended with the written approval of the Commission after the disconnection'; and

(ii) in paragraph (a):

(A) by inserting before the word 'expenses' the word 'reasonable';

(B) by deleting the word 'and' at the end of the paragraph; and

(C) by inserting after paragraph (a), the following paragraph: '(aa) the manner of calculation of the loss of revenue and items of expenses; and'; and

(e) in subsection (5), by inserting after the words 'written statement' the words 'under subsection (4)'.

[31] In the new provisions as of 1 January 2016, s 38 will be read as follows:

(1) Where any person employed by *a licensee finds* upon any premises evidence which gives reasonable grounds for him to believe *that an offence has been committed under subsection 37(1), (3) or (14),* the licensee or any person duly authorized by the licensee *shall within three working days* from the date of such finding inform the Commission in writing, and the licensee may, upon *giving not less than forty-eight hours' notice* from the same date in such form as may be prescribed, *cause the supply of electricity to be disconnected from the said premises.*

(1A) Notwithstanding any other provisions in this Act, where a police officer not below the rank of Assistant Superintendent applies to a supply authority or a licensee for the disconnection of the supply of electricity to any premises for a period not exceeding one calendar month under section 21A of the Common Gaming Houses Act 1953 [Act 289], the supply authority or the licensee or any person authorized by the supply authority or the licensee shall immediately disconnect or cause the supply of electricity to be disconnected from those premises.

(1B) Upon receiving such information under subsection (1), the Commission may verify the matter, and in cases where it finds that no offence has been committed, the supply of electricity shall be reconnected immediately.

(2) *If the supply of electricity has been disconnected under subsection (1), it shall not be reconnected until the licensee at his discretion gives permission for reconnection.*

Provided that the period of disconnection shall not exceed three months.

(2A) Notwithstanding subsection (2), if the supply of electricity has been disconnected under subsection (1A), it shall not be reconnected without the written permission of a police officer, not below the rank of Assistant Superintendent.

(3) The licensee *may require the consumer to pay him for the loss of revenue due to the offence committed under subsections 37(1), (3), and (14*) and any reasonable expenses directly incurred by the licensee under this section, including expenses incurred in respect of reconnection of electricity in the manner as have been directed by the Commission:

Provided that and subject to subsection (4), if the licensee does not proceed with

a claim for such loss of revenue and expenses in Court, the licensee may only claim against the consumer for the said loss of revenue and expenses for a period not exceeding six months retrospectively from the date the offence was discovered under subsection (1).

(4) *A written statement by an employee of the licensee duly certified by the licensee or any person authorized by the licensee specifying*:

(a) the amount of loss of revenue or the reasonable expenses incurred by the licensee;

(aa) the manner of calculation of the loss of revenue and items of expenses; and

(b) the person liable for the payment thereof,

shall be prima facie evidence of the payment that has to be made by the consumer under subsection (3), and such written statement shall be notified to the consumer within fourteen working days or any period as extended with the written approval of the Commission after the disconnection.

(5) The amount stated in the written statement under subsection (4) shall, within the period specified in the statement, be due and payable to the licensee, and in default of payment, such amount shall be recoverable by civil action in a court. (Emphasis added.)

[32] We also reproduced the pre-amendment provisions of s 38 as follows:

38 Disconnection of supply of energy

(1) Where any person employed by a licensee *finds upon any premises evidence which in his opinion proves that an offence has been committed under* section 37(1), 37(3), or 37(14), the licensee or any person duly authorized by the licensee may, upon giving not less than twenty-four hours' notice, in such form as may be prescribed, cause the supply of electricity to be disconnected from the said premises.

(1A) Notwithstanding any other provisions in this Act, where a police officer not below the rank of Assistant Superintendent applies to a supply authority or a licensee for the disconnection of the supply of electricity to any premises for a period not exceeding one calendar month under section 21A of the Common Gaming Houses Act 1953, the supply authority or the licensee or any person authorised by the supply authority or the licensee shall immediately disconnect or cause the supply of electricity to be disconnected from those premises; and *(2) If the supply of electricity has been disconnected under subsection (1), it shall not be reconnected until the licensee, at his discretion, gives permission for reconnection:*

Provided that the period of disconnection shall not exceed three months.

(2A) Notwithstanding subsection (2), if the supply of electricity has been disconnected under subsection (1A), it shall not be reconnected without the written permission of a police officer, not below the rank of Assistant Superintendent.

(3) *The licensee may require the consumer to pay him for the loss of revenue due to the offence committed under* section 37(1), 37(3), and 37(14) and any expenses incurred by the licensee under this section, including expenses incurred in respect of the reconnection of electricity supply.

(4) A written *statement by an employee of* the licensee duly certified by the licensee or

any person authorized by the licensee specifying:

(a) the amount of loss of revenue or the expenses incurred by the licensee; and

(b) the person liable for the payment thereof

shall be prima facie evidence of the payment that has to be made by the consumer under subsection (3).

(5) The amount stated in the written statement shall, within the period specified in the statement, be due and payable to the licensee, and in default of payment, such amount shall be recoverable by civil action in a court.

[33] We remind ourselves not to venture into the merit of the substantive case as the issue before us is whether there are serious issues to be tried for His Lordship at the High Court to exercise his discretion in granting an interim injunction pending the hearing of the suits. However, upon perusal of the amended s 38 of the Act, particularly sub-s (4), we are unable to find the provision that enable the appellant as a provider of the electricity supply to disconnect the supply after the offending meter has been rectified or remedied and further loss of revenue has ceased. Therefore, in our view, the amendment has not altered the position as determined by the Federal Court in affirming this court's decision in *Mayaria*. The appellant's statutory right to disconnect is still relevant and constitutes a serious question that must be addressed substantively and fully determined at the trial.

[34] Our view is further fortified by the rationale or the reasons of the amendment as explained in para 31 of the explanatory statement of the Amendment Bill as follows:

31 Clause 30 seeks to amend section 38 of Act 447 *to ensure that only in clear and proven cases of electricity theft* under the Act *can a licensee disconnect supply to a consumer*. The Commission may also verify whether such offences had been committed and if it has not been committed, the Commission may direct the reconnection of supply of electricity by the licensee. The licensee shall also *have to prove that it had suffered losses* and reasonable expenses *before it can claim against the consumer* concerned, and the licensee *can only recover such losses* or expenses *through a court action and not by disconnection of supply of electricity* and the licensee may only claim for the loss of revenue and expenses for a period of six months only unless it is a claim in Court. (Emphasis added.)

[35] The arguments by the appellant's learned counsel are evidently contradictory to the legislative intent. We can only interpret the law as the legislature passes it. It is trite that we cannot improve on it or read deeming provisions into it. An examination of the structural amendment of sub-s (4) of s 38 invites a judicial determination whether the appellant has a right to disconnect the supply of electricity after the meter had been rectified and is in good working order with no further loss of revenue occasioned to the appellant.

A **[36]** Based on the foregoing reasons, we do not find any merit in both appeals, and we unanimously dismissed the appeals with costs in the cause.

Both appeals dismissed with costs in the cause.

B Reported by Muhamad Azham Marwan

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